90-507

NO. A - 112

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1990

E. WARNER BAILEY AND WIFE,
NONA ANN BAILEY, DEBTORS, PETITIONERS

VS.

EAST TEXAS PRODUCTION CREDIT ASSOC.,
FIRST REPUBLICBANK-LUFKIN (NOW FDIC),
SMALL BUSINESS ADMINISTRATION, AND
DALE THOMAS, TRUSTEE, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Have the rules of "fundamental justice" been trampled by the refusal of the Fifth Circuit Court of Appeals to allow allegations and factual documents (FDIC's written admission of no special protection from unlawful or tortious foreclosure) to be entered when it is so clear that not allowing the evidence to be presented is truly a miscarriage of justice ?

Has the Fifth Circuit not clearly understood that there is a material difference between the agreed stipulations of September 12, 1988, and the Agreed Final Judgment of July 18, 1989?

Did the Fifth Circuit turn its back to the fact, so clearly presented in the July 18, 1989 court transcript, that the U. S. District Court, did in fact place restraints and/or a gag order on the Baileys, so much so that they were not allowed due process of law ?

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PETITIONERS

VS.

EAST TEXAS PRODUCTION CREDIT ASSOCIATION, REPUBLICBANK-LUFKIN (NOW FDIC), SMALL BUSINESS ADMINISTRATION, AND DALE THOMAS, TRUSTEE

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioners E. Warner Bailey and wife Nona Ann Bailey, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

The Court of Appeals refused to allow as additional evidence a signed written document from the FDIC stating

that it has no special protection from unlawful or tortious foreclosures, therefore voiding 12 U.S.C. #1823(e) and the D'Oench, Duhme doctrine, the "shield law", as far as the Baileys instant case.

The Court of Appeals further failed to obtain an accurate and firm ruling on the material difference between the agreed stipulations read into the records of the U. S. District Court of the Eastern District, Tyler, Texas, on September 12, 1988, and the Agreed Final Judgment entered by the same court on July 18, 1989.

The Baileys further pray that this Court issue this writ of certiorari to uphold their constitutional right as to "due process of law", since the District Court held undue restraints upon the Baileys, therefore making it impossible for them to properly defend themselves.

OPINIONS BELOW

The Agreed Final Judgment of the U. S. District Court, Eastern Divion, Tyler, Texas, was entered on July 19, 1989 and is reprinted in the appendix hereto, p. A-20, infra

The written opinion of the U. S. Court of Appeals for the Fifth Circuit affirming the U. S. District Court's Agreed Final Judgment was issued on April 26, 1990, and is reprinted in the appendix hereto, p. A-1, infra

The non-opinion order from the Court of Appeals denying the Petitioners Petition for Rehearing was issued on May 23, 1990, and is reprinted in the appendix hereto, p. A-26, infra

The non-opinion order from the Court of Appeals denying the Petitioners Motion to Recall and Stay the Mandate was issued on June 22, 1990, and is reprinted in the

appendix hereto, p. A-28, *infra*

JURISDICTION

The U. S. Court of Appeals for the Fifth Circuit, on April 26, 1990, affirmed the Agreed Final Judgment of the U. S. District Court, Eastern Division, Tyler, Texas dated July 18, 1989. See p. A-1, *infra*

The Petitioners, within the time allowed under Federal Rule of Appellate Procedure 40, filed a petition for rehearing. The petition was denied on May 23, 1990. p. A-26, *infra*

The order from the Supreme Court of the United States granting an Extension of Time for Petitioners to file their Petition for a Writ of Certiorari was issued August 8, 1990, and is reprinted in the appendix hereto, p. A-31, *infra*

The jurisdiction of this Court to review the judgment of the Court of Appeals for the Fifth Circuit is involked under 28 U.S.C. #1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioners are making a claim under the Fifth and Fourteenth Amendments to the Constitution of the United States. Said constitutional provisions read in part:

> ",nor be deprived of life, liberty, or property, without due process of law;"

The opinion written in French v. Barber Asphalt Paving Co., 181 U. S. 324, 328 (1901) states in part,

> "...some of our cases arose under the provisions of the Fifth and others under those of the Fourteenth Amendment to the Constitution of the United States...the Fourteenth Amendment clause as it binds the States has been held to contain implicity not only the

> standards of fairness and justness found within the Fifth Amendment's clause but also to contain many guarantees that are expressly set out in the Bill of Rights. In that sense, the two clauses are not the same thing, but insofar as they do impose such implicit requirements of fair trials, fair hearings, and the like...the interpretation of the two clauses is substantially if not wholly the same."

Petitioners are making further claim that 12 U.S.C. #1823(e), commonly referred to as the "Shield Law", and the D'Oench, Duhme Doctrine do not apply in the instant case of the Baileys (contrary to the ruling of the District Court and the Court of Appeals' affirmation) and that documents supporting this evidence were not allowed to be presented to the Court of Appeals.

A request through our Senator, Phil Gramm, asking him if the Congress of the U.S. had in fact passed a "shield" law protecting the FDIC from claims of unlawful or tortious foreclosures, see

A-32, *infra* , produced a letter from the FDIC itself, which states, in part, "...in connection with a possible unlawful foreclosure...no such special protection exists." A-37, *infra*

STATEMENT OF THE CASE

The United States District Court for the Eastern District of Texas, Tyler, Texas, had jurisdiction in the original case pursuant to Title 28 #1334(d).

On February 9, 1988, the U. S. District Court for the Eastern District of Texas withdrew this instant case from the U. S. Bankruptcy Court for the Eastern District of Texas, to be effective March 1, 1988.

An Emergency hearing was held on September 9, 1988 for discussion as to when to go to trial. At that time the Baileys informed the judge that they had

not been allowed to make any discovery and were not ready for trial. The judge ignored the Baileys pleas and set the hearing for Monday, September 12, 1988.

On Monday, September 12, 1988, a hearing was held, at which time certain stipulations were made and read into the records.

Quoting from the official transcript of the court records, pertaining to the agreement:

> MR. DONALD COTHERN, COUNSEL FOR ETPCA: "...it is further the stipulation of the parties or stipulation of Mr. and Mrs. Bailey that the present balance owed on the May 18, 1983 note to East Texas Production Credit is $124,000.00 and that the present balance owed on a second note to East Texas Production Credit Association dated January 24, 1985. This is part of the consolidated action originally filed by Mr. Bain, is $36,053.53..." [1]

To make it clearer and reflect the

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[1] Quotation from the Official Record of Proceedings of September 12, 1988, p. 7, l. 15-22.

accuracy of the agreement, Mr. Bailey stipulated into the records in open court at the same hearing of September 12, 1988, the following:

> "Yes, sir. The $36,000.00 note was to be -- I was to buy some -- the equipment for $3,950.00 and the balance would be put on a non-secured debt to be discharged in bankruptcy." [2]

The opposing counsel interrupted Mr. Bailey and clarified that there are in fact two parts of the agreement, and stipulated into the records as follows:

> "...That is really the second part, but I will state the agreement as concerns that. These are two actions which were consolidated. The other action which Mr. Bain originally filed included and concerned the $37,000.00 note that we have discussed. We had also included a complaint to determine dischargeability of debt as to that $37,000.00 note, and the agreement of the parties concerning that is that Mr. Bailey is agreeing to, with permission of the Bankruptcy Court, in the matter to purchase personal property which is secured by that $37,000.00 note and East Texas Pro-

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[2] Ibid., p. 8, l. 21-24

> duction Credit Association will agree to dismiss its no-dischargeability claims against Mr. Bailey with the balance owed on that note, being a general unsecured claim in this bankruptcy case. I believe that is what Mr. Bailey was -- the $30,000.00. The $30,000.00 sum would be an unsecured claim in his bankruptcy case and I believe that is what Mr. Bailey was referring to before." [3]

However, long before the U. S. District Judge signed the Agreed Final Judgment of July 18, 1989, the Texas Farm Credit Bank, along with the same opposing counsel of ETPCA filed a motion in the Bankruptcy Court to lift stay and foreclose on this "second part" of the agreement -- the equipment note. The Bankruptcy Judge signed the order approving the foreclosure on March 1, 1989.

The equipment secured by the "second part", or the equipment note, was picked up and sold at public auction for an

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[3] Ibid., p. 9, l. 1-20

amount in excess of $13,000.00, which the Baileys claim is of material consequences. Nowhere in the Agreed Final Judgement of July 18, 1989, will this Court find mention of the above facts. A-20, infra

On July 18, 1989, the District Court held a trial styled EAST TEXAS PRODUCTION CREDIT ASSOCIATION, Plaintiff, VS. E. WARNER BAILEY and WIFE NONA ANN BAILEY, Defendants in CIVIL ACTION NO. TY-88-151 (An Adversary Proceeding Relating to Bankruptcy Case No. TY-85-00814), consolidated with EAST TEXAS PRODUCTION CREDIT ASSOCIATION, Plaintiff, VS. E. WARNER BAILEY and WIFE, NONA ANN BAILEY; REPUBLICBANK LUFKIN, N.A.; THE SMALL BUSINESS ADMINISTRATION and DALE THOMAS, Trustee, Defendants in CIVIL ACTION NO. TY-88-00153 (An Adversary Proceeding Relating to Bankruptcy Case No. TY-85-00814).

The Baileys had been advised by the secretary of the judge prior to that date that this was to be a preliminary hearing. At the onset of the hearing the judge dismissed the attorney, Howard Lee Norris, who represented to the Court that he was representing the Baileys, although he had not made any discovery nor taken or attended depositions of the opposing parties. Furthermore, Mr. Norris had not responded to, objected to, or filed any proceedings or documents pertaining to this lawsuit since January 15, 1988, -- for the eight months prior to the hearing of September 12, 1988.

After dismissing Mr. Norris from the courtroom, the judge instructed Mr. Bailey to address the Court, but limiting his response to only <u>two</u> issues - those being the production of any evidence of (1) <u>fraud</u> or (2) <u>mutual mistake</u>:

> "The Court invites you to address two things, and that is at the time the agreement was reached that resulted in the settlement of this case...whether there was at that time any matters that you consider to amount to fraud or mutual mistake that could have resulted in or did result in the agreement being reached, and I think we will limit this hearing today to those two points." [4]

With these unfair restraints placed on the Baileys, they were unable to defend themselves in a manner guaranteed them by the Constitution of the United States under the Fifth and Fourteenth Amendments - the right to a fair trial and due process of law.

Mr. Bailey did however make somewhat of an attempt, through pretense of it being a mistake, to inform the Court that there was a material difference in the agreed stipulations of September 12, 1988, and the Agreed Final Judgment

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[4] Quotation from the Original Record of Proceedings of July 18, 1989, p. 4, l. 10-22

presented on July 18, 1989.

> MR. BAILEY: "...One other issue that is extremely confusing to us is the part on East Texas Production Credit Association. You withdrew the references from Bankruptcy Court. All of them were consolidated into either TY-88-00151 or 00153. We have facts that will back that up...."
> THE COURT: "The Court withdrew the reference on this adversary proceeding only."
> MR. BAILEY: "That's correct."
> THE COURT: "On these two cases."
> MR. BAILEY: "Yes, sir, that is correct, and that's all that was involved. There were a real estate note and a promissory note in the adversary proceedings...." [5]

Mr. Bailey continues, trying to inform the Court that ETPCA had pulled out a portion, the "second note", from the District Court's Adversary Proceeding and taken it back into bankruptcy court:

> "...East Texas Production Credit, through their Federal Bank of Texas without proper intervening vent back in to Judge Able's Court and got a 4001 approved...." [6]

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[5] Ibid., p. 13, l. 2-20
[6] Ibid., p. 13, l. 20-23

The Court's only response to this was,

"Thank you, sir." [7]

Although the Baileys asked the Court for an opportunity to be presented before a jury and the Court in a proper manner and let justice be done, the judge ruled that there was no evidence of (1)fraud or (2)mutual mistake, and granted the Agreed Final Judgment.

> THE COURT: "Gentlemen, the Court finds -- I'm sorry. You are not all gentlemen. Old habits are hard to break. Ladies and gentlemen, the Court finds that there is no evidence of fraud or mutual mistake that would justify the setting aside of the agreement reached settling these two cases and the Court has approved the agreed final judgment which was the amended or second final judgment and it will be filed today...." [8]

The Baileys appealed the judgment of the lower court to the U.S. Court of Appeals for the Fifth Circuit. The Court

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[7] Ibid., p. 14, l. 5
[8] Ibid., p. 14, l. 7-16

of Appeals affirmed the lower court ruling, and stated they were barred from accepting any other evidence not presented at the July 18, 1989 trial. The letter which the Baileys have from the FDIC to Senator Phil Gramm dated July 11, 1989, and the envelope addressed to the Baileys postmarked July 26, 1989, show that it was impossible to have been entered into the record at the July 18, 1989 trial. See A-37, infra

The Court of Appeals, on May 23, 1990, denied the Baileys Petition for Rehearing without giving an opinion. Because of their failure to notify the Baileys of the denial for this Petition for Rehearing, the clerk's office for the Court of Appeals instructed the Baileys to enter a motion to Recall and Stay the Mandate. This the Baileys did and the Court of Appeals denied this motion on June 22, 1990.

Because of some confusion as to the clear meaning of the denial order for the Bailey motion, and upon a motion to the U. S. Supreme Court, an Extension of Time to file a Petition for Writ of Certiorari was granted August 8, 1990.

REASONS FOR GRANTING THE WRIT

I

The decision of the Court of Appeals for the Fifth Circuit to bar issues of facts not previously presented to a lower court is an extraordinary, incorrect and dangerous reading of this Court's standards for the review of decisions.

The Court of Appeals in this instant case has ruled, "Especially where, as here, the new allegations involve issues of fact, we are barred from considering

them on appeal" (See A-15, infra . But see Martinez v. Mathews, 544 F.2d 1233 (5th Cir. 1976), in which case the Fifth Circuit saw fit to consider the new facts. "If necessary, the Court may also exercise a residual power 'to do what plainly ought to be done.'" Mercury Motors Express, Inc. v. Brinke, 475 F.2d 1086, 1091 (5th Cir. 1973), quoting 9 Moore's Federal Practice *

The Fifth Circuit Court of Appeals has exercised these powers in other cases as well. See Evans v. Triple R Welding & Oil Field Maintenance Corp., 472 F.2d 713 (5th Cir. 1973); American Surety Co. of New York v. Coblentz, 381 F.2d 185, 189 n.5 (5th Cir. 1967); Mercury Motors Express, Inc. v. Brinke,

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* Moore's Federal Practice, Vol.9, para. 110.25[1](2d ed. 1972) "Once a case is lawfully before a Court of Appeals, it does not lack power to do what plainly ought to be done."

475 F.2d 1086, 1091 (5th Cir. 1973)

"It is frequently said that appellate courts should not consider issues raised for the first time on appeal. See, e.g., Guerra v. Manchester Terminal Corp., 498 F.2d 641, 658, n.4 (5th Cir. 1974) But even if this rule is pertinent here, it can give way when a pure question of law is involved and a refusal to consider it would result in a miscarriage of justice." Evans v. Triple R Welding & Oil Field Maintenance Corp., 472 F.2d 713, 716 (5th Cir. 1973)

This Honorable Court has said in this regard: "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed or passed upon by the court or administrative agency below. See Blair

v. Oesterlein Machine Co. 275 U.S. 220, 225, 48 S.Ct. 87, 88, 72 L. Ed. 249." Hormel v. Helvering, 312 U.S. 552, 557 (8th Cir. 1941)

Although the Court of Appeals in its opinion to the Baileys, A-1, *infra*, avoided the mention of the letter from the FDIC, A-37, *infra*, admitting that 12 U.S.C. #1823(e), (commonly known as the "Shield Law" passed by our U. S. Congress) would not apply to an unlawful foreclosure, you may rest asured that the records will show that the letter was presented as an issue in the Baileys' appeal.

The U. S. court of Appeals for the Eight Circuit formulated very precisely the basis for the statement "to do what plainly ought to be done" when it issued the opinion, "A rigid and undeviating judicially declared practice whereby

courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with the policy that rules of procedure and practice should promote, not defeat, the ends of justice. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." (Emphasis added) Hormel v. Helvering 312 U.S. 552, 557 (8th Cir. 1941)

II

It seems to the Baileys to be a serious error of the judicial system when agreements arrived at in a higher court, and ones which we are led to trust and rely on, can be unraveled in another lower court and then have the same higher court allow such actions to be

omitted from the Agreed Final Judgment. Has the Court of Appeals failed to see that due process of law has been obliterated in this instance?

In addition to failing to recognize the material difference between the stipulations and judgment, the Court of Appeals failed to understand and recognize the Baileys attempts to introduce this issue of fact to the district court, and chose to ignor the Baileys pleadings to that effect.

There is a material difference in the stipulations pertaining to the agreement of September 12, 1988, and the agreed final judgment of July 18, 1989, and it was brought before the District Court. In our layman's way, we (the Baileys) have been unable to make this point clear to the Court of Appeals, although the records are very clear as to

the stipulations and the Agreed Final Judgment.

The Court of Appeals set forth in its opinion of April 26, 1990, the following: "In addition, they claim the agreement gave them the right to purchase certain encumbered farm equipment at a specified price, with the understanding that the deficiency on the note secured by that equipment would become an unsecured debt discharged in the bankruptcy. Because these agreements were not incorporated into the agreed judgment, the debtors argue that judgment does not accurately reflect the real settlement." pp A-13, *infra*

The U. S. Court of Appeals goes on to admit that the issue was raised below: "There followed from Mr. Bailey...(4) an ill-defined complaint regarding ETPCA's activities in one of the related cases pending in the bankruptcy court." p.

A-17, *infra*

The Baileys advised the Court of Appeals that these above quotations are concerning the exact same issue.

The Court of Appeals referenced White Farm Equipment Co. v. Kupcho, 792 F.2d 526, 530 (5th Cir. 1986) observing that "unless the judgment differs materially from their agreement,...the Baileys stipulations were binding..." p. A-9, *infra*

However, there is a large fly in the ointment. There was, still is, and always will be, a material difference between the agreement and the final judgment and an analysis of the court records will reflect this.

It is undisputed that the judgment must conform to the stipulations. Federal law would provide relief if the judgment failed to accurately reflect the

actual stipulated agreement. "If however, the judgment does not conform to the stipulation, relief may be had, since the terms of the stipulation may not be enlarged or lessened by the court." (Emphasis added) Bryan v. Reynolds, (1956) 143 Conn. 456 123 A.2d 192. And, further consider, "The trial court's judgment must conform to pleadings and is erroneous if it fails to do so." Colin v. Baskett, 392 S.W. 2d 804 (Tex. Civ. App. 1965)

Although the Court of Appeals has set forth in its opinion of April 26, 1990, that the note pertaining to the equipment "is not exactly clear" and "an ill-defined complaint" was raised, the Baileys would bring to the attention of this Honorable Court (as they did to the Court of Appeals for the Fifth Circuit) that this is one and the same issue, and because of the improper restraints

placed upon them, the Baileys were prevented from being more specific in their declarations to the District Court.

III

Due to the emphatic restraints placed on the Baileys at the July 18, 1989, hearing, their constitutional right under the Fifth and Fourteenth Amendments to due process of law and a fair trial were denied them by the U. S. District Court.

FRCP Rule 60 (b) clearly sets forth reasons whereby a court may relieve a party from a final judgment, order, or proceeding: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void;

(5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. In six clauses the rule specifies 14 grounds on which the relief may be based, and also permits any other reason justifying relief from the operation of the judgment.

Clause (6) of Rule 60(b) "gives the courts ample power to vacate judgments whenever that action is appropriate to accomplish justice." Federal Practice and Procedure, Charles Alan Wright and Arthur R. Miller, 211, Vol. 11, West Publishing Co., St. Paul, Mn. 1973.

Texas law would also recognize lack of consent or other good cause as

sufficient to justify setting aside the challenged stipulations.

In his opening remarks, the Court instructed Mr. Bailey to address only two things, whether there was anything he considered to amount to fraud or mutual mistake, stating that he was limiting the hearing to those two points, clearly ignoring all other reasons covered in Rule 60(b). The Court again limited the response:

> "Whether that agreement resulted from a mistake on both sides of a material fact or whether fraud existed that induced you to reach the agreement." [10]

And, again, saying,

> "And that is whether there was mutual mistake, that is a mistake on both sides. My understanding of the law is unilateral mistake or mistake on one side is not sufficient to set aside such an agreement." [11]

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[10] Quotation from Original Record of Proceedings of July 18, 1989, p. 5, l. 9-12

[11] Ibid., p. 6, l. 8-12

later in the hearing, further emphasizing that fraud or mutual mistakes are the only issues Mr. Bailey is allowed to respond to, the Court states:

> "I wanted to give you an opportunity to bring to my attention any, since we've eliminated fraud probably, any matters that could be considered under the law as mutual mistake, that is, a mistake of fact on both sides that caused an agreement to be reached, which absent that mistake the agreement wouldn't have been reached. Thats distinguished from a mistake on one side or a unilateralmistake. Unilateral mistake is, except in extraordinaly circumstances, not a basis for setting aside an agreement such as this." [12]

The Court of Appeals for the Fifth Circuit conceded that the U. S. District Court did in fact restrain the Baileys: "It is true, and somewhat troubling that the district court purported at the outset to limit the discussion at the July 18 hearing to the issues of fraud and mutual mistake." However, the Court of

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[12] Ibid., p. 8, l. 22 - p. 9, l. 9

Appeals goes on to state, "but later in the hearing the court apparently decided to relax these constraints."

This brings up two very important points. First, by the use of the word "apparently", the Court of Appeals is indicating the lack of a factual statement by the U. S. District Court to the Baileys that they are allowed to pursue their issues to the fullest extent. The Baileys, being forced to appear pro se, were never led to feel that the limits imposed at the outset were removed or relaxed at any time during the trial. The Court repeatedly, throughout the hearing -- a total of nine (9) times during the short hearing -- emphasized the only two issues it would consider.

Second, and most important, is the closing statements of the District Court thereby eliminating any "appearances" of relaxation of the constraints placed on

the Baileys:

> "...the Court finds that there is no evidence of fraud or mutual mistake that would justify the setting aside of the agreement reached settling these two cases and the Court has approved the agreed final judgment...." [13]

CONCLUSION

In conclusion, your Petitioners, E. Warner Bailey and wife Nona Ann Bailey, respectfully submit that the U. S. District Court, Eastern District, Tyler, Texas, decided this case strictly on the documents prepared previously by opposing counsel and without allowing the Baileys to properly defend themselves, and that the U. S. Court of Appeals for the Fifth Circuit did not look closely enough at the case to see that fundamental justice

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[13] Ibid., p. 14, l. 10-14

had been trampled:

(1) They refused to allow evidence to be presented that could truly prevent a miscarriage of justice.

(2) They have not readily seen the material difference in the agreement stipulated into the court records of September 12, 1988, and the final judgment of July 18, 1989, and

(3) They have denied the Baileys their constitutional right to a fair trial thru due process of law, and by sanctioning the impropoer restraints placed on the Baileys at the July 18, 1989 hearing.

We wish to state to this Honorable Court that we are not lawyers, nor do we have any training in law or in representing ourselves in legal matters. For any difficulty this has caused the judicial system, we are sorry, but we would remind this Court that our acting

pro se is not by choice.

We do feel, however, that we are equally schooled and experienced with all concerned parties in determining what is right from what is wrong, and certainly feel that we have adequately expressed this to the district court at the hearing on July 18, 1989, and wish to point this out now to this Honorable Court, as evidenced by our closing statement at that hearing:

> "...All I'm asking is an opportunity to be presented before a jury and the court in a proper manner and let justice be done. I simply ask no more." [14]

We believe that the improper restraints placed on the Baileys by the District Court is not proper manner.

Therefore, your Petitioners pray that this Honorable Court will issue the writ of certiorari and will review the matters complained of and reverse the

decisions and opinion of the said U. S. Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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[14] Ibid., p. 14, l. 2-4

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-2757

Summary Calendar

IN THE MATTER OF: E. WARNER BAILEY and NONA ANN BAILEY, Debtors. E. WARNER BAILEY and NONA ANN BAILEY, Appellants,

versus

EAST TEXAS PRODUCTION CREDIT ASSOC., REPUBLICBANK - LUFKIN, THE SMALL BUSINESS ADMINISTRATION, Etc., and FEDERAL DEPOSIT INSURANCE CORP., Appellees.

Appeals from the United States District Court for the Eastern District of Texas

(TY-88-151-CA c/w TY-88-153-CA)

(April 26, 1990)

Before POLITZ, GARWOOD and JOLLY, Circuit Judges. [1]

GARWOOD, Circuit Judge:

E. Warner Bailey and his wife Nona Ann Bailey (collectively, the Baileys) appeal pro se the district court's decision not to set aside a number of stipulations the Baileys made in open court regarding the validity of certain deed of trust liens on their property. We affirm.

Facts and Proceedings Below

This controversy arose out of the Baileys' efforts to evade foreclosure on two tracts of land they owned in East Texas ("the 150.7 acre tract," and two

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

smaller parcels collectively referred to as "the 111.77 acre tract"). In the period between 1976 and September 2, 1985, the Baileys negotiated and renegotiated a complex collection of promissory notes secured by liens on one or the other of these tracts. The notes relevant to this appeal were executed in favor of East Texas Production Credit Association (ETPCA), the Small Business Administration (SBA), and RepublicBank-Lufkin (RBL), which has since been declared insolvent and was succeeded in interest by the Federal Deposit Insurance Corporation (FDIC) as receiver during the course of this litigation. In obtaining the loans, the Baileys represented that the tracts were not their homestead. Beginning in 1985, the Baileys defaulted and their creditors sought to foreclose.

In an attempt to assert a claim of homestead exemption, the Baileys filed a

voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Eastern District of Texas on September 2, 1985.[2] Their bankruptcy generated a bewildering series of adversary proceedings, several of which have been consolidated in the present action. The critical issue in this proceeding is whether the various liens discussed above were impaired by the Baileys' asserted homestead claim.

This issue was set for trial on September 12, 1988. Prior to that date, the parties allegedly reached an agreement settling their differences. Apparently the Baileys agreed to drop their homestead claim in exchange for the creditors' agreements not to challenge

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[2] Over the debtors' objections, the bankruptcy court later converted their case to a Chapter 7 liquidation proceeding.

the dischargeability of the unsecured deficiencies.

At docket call on the date of trial, counsel for the FDIC presented a motion for summary judgment. That motion alleged that the FDIC had a facially valid first lien on the 111.77 acre tract and a third lien on the 150.7 acre tract unimpaired by the debtors' homestead rights, and further that any defenses to these liens the Baileys' may have had against RBL were barred as against the FDIC by 18. U.S.C. # 1823(e) and the doctrine of D'Oench, Duhme & Co. v. FDIC, 62 S.Ct. 676 (1942). On the record, counsel for the Baileys, Howard Norris (Norris), conceded that the motion was "well taken," a concession that the court stated on the record it would view as a stipulation to the FDIC's right to judgment. Neither Norris nor Mr. Bailey (who was also present at the conference) ob-

jected to this characterization.

Following this exchange, counsel for ETPCA read into the record a series of stipulations on which he reported all parties had reached prior agreement as a result of the settlement negotiations. He stated that the parties agreed inter alia, (1) that ETPCA had a valid first lien not defeated by any homestead exemption on the 150.7 acre tract securing a note in the amount of $91,331; (2) that the SBA had a valid second lien against the same tract; (3) that the FDIC had a valid third lien against the same tract; and (4) that these liens were not impaired by the debtors' homestead exemptions. All counsel present, including Norris on behalf of the debtors, confirmed the stipulations on the record. Mr. Bailey also personally confirmed on the record to the court that the stipu-

lation was correct.

Based on these stipulations, the court indicated that it would grant the FDIC's motion for summary judgment and instructed the parties to prepare an agreed judgment implementing the stipulations and disposing of the matter entirely. On September 21, the court entered the FDIC's proposed order granting the motion for summary judgment. Two days after the court granted this judgment, the Baileys filed a response to the FDIC's motion, denying the validity of the liens and asserting a homestead exemption. The response also asserted fraud in the settlement negotiations, and raised several other defenses to the merits of the summary judgment motion. The document was filed by a new attorney apparently retained by the Baileys to replace Norris, although neither counsel made any formal motion for substitution.

In the meantime, counsel for ETPCA circulated a proposed Agreed Judgment implementing the stipulations announced at the September 12 docket call. The Baileys again filed a response essentially repudiating the stipulations. In the ensuing months, there followed a string of objections, motions for sanctions, and responses, as well as a motion by Norris to withdraw as the Baileys' counsel. On July 18, 1989, the court held another conference, during which it granted Norris's motion to withdraw and gave the Baileys (who were then proceeding pro se) an opportunity to show cause why the summary judgment entered on September 21 should be set aside and the court should not adopt the proposed agreed judgment implementing the stipulations. The court specifically asked Mr. Bailey whether he had any evidence of

fraud or mutual mistake that had given rise to the stipulations entered on September 12. In response, Mr. Bailey admitted that he had no evidence of fraud, and he did not indicate any mutual mistake. Accordingly, the district court refused to disturb the summary judgment and entered ETPCA's proposed Agreed Final Judgment implementing the remaining stipulations on July 19, 1989. Again acting pro se, the Baileys appealed.

Discussion

Unless the judgment differs materially from their agreement, or their agreement or stipulations were invalid under state law at the time they were made, the Baileys' stipulations were binding and the district court was free to hold them to their word by incorporating the terms of their agreement into a final judgment, nothwithstanding their subsequent change of heart. White Farm

Equip. Co. v. Kupcho, 792 F.2d 526, 530 (5th Cir. 1986). Thus, the only questions relevant to this appeal are (1) whether the agreements or stipulations that gave rise to this judgment were valid under Texas law, and (2) whether the judgment accurately reflects the terms of those agreements or stipulations.

Once made, a judicial stipulation in Texas cannot be withdrawn absent a showing of "fraud, mistake, lact of consent, or other reason constituting good cause." See Westridge Villa Apts. v. Lakewood Bank & Trust Co., 438 S.W.2d 891, 895 (Tex. Civ. App.--Fort Worth 1969, writ ref'd n.r.e.); see also 68 Tex. Jur. 3d Stipulations # 5, at 11-12. As a general rule, unilateral mistake is insufficient to justify setting aside an agreement unless the mistake is induced

by the acts of the other party. See Interfirst Bank of Abilene, N.A. v. Lull Mfg., 778 F.2d 228, 232 (5th Cir. 1985) (applying Texas law). In the absence of fraud, the parties to an agreement are charged with knowledge of its terms and legal effect. See Blount v. Westinghouse Credit Corp., 432 S.W.2d 549, 554 (Tex. Civ. App.--Dallas 1968, no writ.

In the present case, the district court offered the Baileys an opportunity to establish fraud or mistake as grounds for relief from the stipulations at its conference on July 18. Mr. Bailey conceded on the record that he had no evidence of fraud on the part of the creditors inducing him to enter into the stipulations. In response to the court's queries on mistake, Mr. Bailey complained that he had not had a chance to read the FDIC's Motion for Summary Judgment prior

to the conference and made a few arguments going to the merits of that motion, but never indicated any facts suggesting a mutual mistake of fact or acts by the creditors that might have misled him into making the relevant stipulations. Nor did Mr. Bailey present any evidence that his attorney lacked authority to enter into the stipulations on his behalf, or provide any explanation for his acquiescence in his attorney's actions at the conference or his confirmation of the stipulated agreement announced by counsel for ETPCA. Nor, finally, did he suggest that the agreed judgment failed to implement the actual agreement reached and stipulated to by the parties. At the end of the hearing, the district court held that the stipulations were not undermined by fraud or mistake and that no good cause existed to set them aside.

For the first time on appeal, the Baileys raise several new challenges to the judgment. They claim, for example, that they were inadequately represented by counsel at the September 12 conference and that they were coerced into acquiescence by improper threats of criminal prosecution. In addition, the Baileys allege that the agreed judgment failed to accurately reflect the agreement they actually reached with their creditors. The Baileys' characterization of the agreement they thought they were entering is not exactly clear, but they seem to allege that they agreed to relinquish their claim of a homestead exemption with the understanding that this would extinguish their debt to the SBA in its entirety. In addition, they claim the agreement gave them the right to purchase certain encumbered farm equipment at a specified price, with the understanding

that the deficiency on the note secured by that equipment would become an unsecured debt discharged in the bankruptcy. Because these agreements were not incorporated into the agreed judgment, the debtors argue that judgment does not accurately reflect the real settlement. [3]

Assuming arguendo that these allegations, if true, would justify relief, the Baileys' appeal nevertheless must fail because none of these claims were properly raised before the district court. As an appellate court, we sit to correct errors, and the district court cannot have erred if it was never given the opportunity to consider an issue in the first place. E.g., Donovan v.

[3] In addition, the Baileys raise several arguments going to the merits of the FDIC's motion for summary judgment. The latter are immaterial to the validity of the stipulations at issue and are therefore irrelevant to this appeal.

Hamm's Drive Inn, 661 F.2d 316, 317 (5th Cir. 1981); Stanley Educational Methods, Inc. v. Becker C.P.A. Review Course, Inc., 539 F.2d 393, 394 (5th Cir. 1976). Especially where, as here, the new allegations involve issues of fact, we are barred from considering them on appeal.

The Baileys concede that they did not raise below their allegations that they were inadequately represented, or that they were coerced, or that the agreed judgment failed to accurately reflect the real settlement between the parties. Their only relevant response is a claim that they were denied the opportunity to present these arguments, because the district court limited discourse at the July 18 hearing to the issues of fraud and mistake.

It is true, and somewhat troubling, that the district court purported at the

outset to limit the discussion at the July 18 hearing to the issues of fraud and mutual mistake. As we have noted, Texas law would also recognize lack of consent or other good cause as sufficient to justify setting aside the challenged stipulations, and federal law would provide relief if the judgment failed to accurately reflect the actual agreement. Thus, if the court really had prevented the Baileys from presenting evidence on any issues other than fraud or mistake, they might indeed be entitled to a remand for a second opportunity to prove their claims.

That, however, is not the case. The district court did try at the outset to limit discussion to the issues of fraud and mistake, but later in the hearing the court apparently decided to relax these constraints. After giving Mr. Bailey the

opportunity to reveal any fraud or mistake underlying the stipulations, the court asked if he had "anything else" to present, to which Mr. Bailey responded that he had "several things" he would like to air before the court. The court simply responded "Go ahead."

There followed from Mr. Bailey (1) an extended response to the merits of the D'Oench, Duhme arguments presented in the FDIC's motion for summary judgment; (2) a reassertion and defense of their homestead exemption as applied to the 111.77 acre tract; (3) a request that the proceeding be remanded to the bankruptcy court, apparently to allow consolidation with related actions pending there; and (4) an ill-defined complaint regarding ETPCA's activities in one of the related cases pending in the bankruptcy court. All of this was obviously irrelevant to the issues of fraud and mistake, and in-

deed irrelevant to the validity of the stipulations at all. Nonetheless, the district court allowed Mr. Bailey to continue without interruption until he was finished. At no point during his presentation did he mention any of the grounds he how raises on appeal for setting aside the stipulations that gave rise to the judgment.

Moreover, the Baileys' failed to plead any of these grounds for relief in their filed responses to the proposed agreed final judgment or the FDIC's motion for summary judgment. Obviously, the court placed no restraints on issues that might be raised in these responses, but the only grounds for setting aside the stipulated agreement pleaded in those documents was fraud. As noted above, the Baileys conceded that they had no evidence of any fraudulent conduct in re-

sponse to the district court's inquiries during the conference on July 18. Between these filings and the open-ended presentation allowed by the court at the close of the July 18 conference, we are satisfied that the debtors had ample opportunity to present their claims to the district court. They failed to do so.

Conclusion

Because the Baileys failed to proffer to the district court any evidence of any proper grounds for relief, that court did not abuse its discretion when it refused to set their stipulations aside. The judgment is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

[Stamped JUL 19 1989]

EAST TEXAS PRODUCTION CREDIT ASSOCIATION,

Plaintiff,

VS.

E. WARNER BAILEY and WIFE, NONA ANN BAILEY,

Defendants.

CIVIL ACTION NO. TY-88-151

(An Adversary Proceeding Relating to Bankruptcy Case No. TY-85-00814)

EAST TEXAS PRODUCTION CREDIT ASSOCIATION,

Plaintiff,

VS.

E. WARNER BAILEY and WIFE, NONA ANN BAILEY; REPUBLICBANK LUFKIN, N.A.; THE SMALL BUSINESS ADMINISTRATION and DALE THOMAS, Trustee,

Defendants.

CIVIL ACTION NO. TY-88-00153

(An Adversary Proceeding Relating to Bankruptcy Case No. TY-85-00814)

AGREED FINAL JUDGMENT

The above-styled and numbered civil actions were called for trial on September 12, 1988, having been previously consolidated for all purposes by Order of the Court dated June 14, 1988. Appearing before the Court were Plaintiff EAST TEXAS PRODUCTION CREDIT ASSOCIATION, who appeared by and through its representatives and counsel of record, Mr. Donald W. Cothern and Jerry E. Bain; Defendants E. WARNER BAILEY and NONA ANN BAILEY, in person and by and through their counsel of record, Mr. Howard L. Norris; Defendant FEDERAL DEPOSIT INSURANCE CORPORATION ("F.D.I.C."), which had been substituted as Receiver for First Republic-

Bank Lufkin, N.A. (formerly RepublicBank-Lufkin) by Order of the Court dated September 12, 1988, by and through its counsel of record, Ms. Pamela A. Prestridge and Mr. John Sloan; Defendant SMALL BUSINESS ADMINISTRATION, by and through its counsel of record, Mrs. Ruth Harris Yeager; and Defendant DALE THOMAS, TRUSTEE, by and through his counsel of record, Mr. Jason Searcy; at which time the parties announced to the Court that a settlement had been reached, which agreement was then read into the record in open Court as a Stipulation between the parties. It is therefore:

ORDERED, ADJUDGED and DECREED that Plaintiff EAST TEXAS PRODUCTION CREDIT ASSOCIATION has a valid, existing Deed of Trust Lien against a non-homestead 150.7 acre tract of land in Cherokee County, Texas, described more particularly in Exhibit "A" attached, which Lien is a

first and superior Lien against said property.

IT IS FURTHER ORDERED that said Deed of Trust Lien in favor of Plaintiff EAST TEXAS PRODUCTION CREDIT ASSOCIATION secures payment of a promissory note executed by Defendants E. WARNER BAILEY and NONA ANN BAILEY and dated May 18, 1983, with a present balance of $124,000.00.

IT IS FURTHER ORDERED that the SMALL BUSINESS ADMINISTRATION has a valid, existing Deed of Trust Lien against the 150.7 acres described above, which Lien is second in priority behind that of EAST TEXAS PRODUCTION CREDIT ASSOCIATION; and that SMALL BUSINESS ADMINISTRATION has a valid, existing Deed of Trust Lien against 48 acres and 64.77 acres of land in Cherokee County, Texas, described in Exhibit "B" attached, which Lien was inferior to a valid Deed of Trust Lien al-

ready foreclosed by RepublicBank Lufkin, N.A.

IT IS FURTHER ORDERED that RepublicBank Lufkin, N.A. had a valid, existing, first Deed of Trust Lien against the real property described in Exhibit "B" attached and a valid third Deed of Trust Lien against the 150.7 acres described in Exhibit "A" attached, which Liens were validly foreclosed by RepublicBank Lufkin, N.A. prior to the filing of bankruptcy by Defendants E. WARNER BAILEY and NONA ANN BAILEY.

IT IS FURTHER ORDERED that the allegations of Plaintiff EAST TEXAS PRODUCTION CREDIT ASSOCIATION, and Defendants F.D.I.C., as Receiver for First RepublicBank Lufkin, N.A., and SMALL BUSINESS ADMINISTRATION, seeking a declaration that the certain indebtedness owed by Defendants E. WARNER BAILEY and NONA ANN BAILEY and described in the

pleadings, be declared non-dischargeable in bankruptcy, are dismissed.

IT IS FURTHER ORDERED that the automatic stay in bankruptcy be terminated as to Plaintiff EAST TEXAS PRODUCTION CREDIT ASSOCIATION, on the basis that E. WARNER BAILEY and NONA ANN BAILEY have no equity in the 150.7 acres described above, and that it be allowed to foreclose its Deed of Trust Lien against the said 150.7 acres in accordance with the terms thereof.

DATED: July 18th, 1989.

/s/ Robert M. Parker

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

IN THE MATTER OF: E. WARNER BAILEY and NONA ANN BAILEY,

Debtors.

E. WARNER BAILEY and NONA ANN BAILEY,

Appellants,

versus

EAST TEXAS PRODUCTION CREDIT ASSOC., REPUBLICBANK - LUFKIN, THE SMALL BUSINESS ADMINISTRATION, ETC. and FEDERAL DEPOSIT INSURANCE CORP.,

Appellees.

Appeal from the United States District Court for the

ON PETITION FOR REHEARING

(MAY 23 1990)

Before POLITZ, GARWOOD and JOLLY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

ENTERED FOR THE COURT:

/S/ William Garwood

United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 89-2757

U.S. COURT OF APPEALS

FILED JUN 22 1990

GILBERT F. GANUCHEAU, CLERK

In The Matter of: E. Warner Bailey and

Nona Ann Bailey,

Debtors.

E. WARNER BAILEY and NONA ANN BAILEY,

Appellants,

versus

EAST TEXAS PRODUCTION CREDIT ASSOC., REPUBLICBANK LUFKIN, THE SMALL BUSINESS ADMINISTRATION, etc., and FEDERAL DEPOSIT INSURANCE CORPORATION,

Appellees.

Appeal from the United States District Court for the Eastern District of Texas

ORDER:

[x] The motion of appellants

for [ ] stay [x] recall and stay of

the mandate pending petition for writ of certiorari is DENIED.

[ ] The motion of appellants for [ ] stay [x] recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____ the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed

with the Clerk of this Court within that time.

[ ] The motion of _____ for a further stay of the issuance of the mandate is GRANTED to and including _____, under the same conditions as set forth in the preceding paragraph.

[ ] The motion of _____ for a further stay of the issuance of the mandate is DENIED.

/s/ Garwood

UNITED STATES CIRCUIT JUDGE

SUPREME COURT OF THE UNITED STATES

NO. A-112

E. Warner Bailey and Nona Ann Bailey,

Petitioners

v.

East Texas Production Credit Assoc.,et al

ORDER

UPON CONSIDERATION of the application of the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including September 21, 1990.

/s/ Byron R. White
Associate Justice of
the Supreme Court of
The United States

Dated this 8th
day of August, 1990.

May 20, 1989

Senator Phil Gramm

Senate Office Building

Washington, D.C. 20510

RE: E. Warner Bailey and wife, Nona Ann Bailey under Chapter 7 U. S. Bankruptcy Court, Tyler, Texas, Case No. TY-85-00814 and A.P. No. A-86-339 - Homestead Rights - Unlawful Foreclosure by RepublicBank, Lufkin (nov FDIC) on the Baileys' Homestead - SBA Farm Disaster Loan and Commodity Credit (Cherokee County ASCS office harassment)

Dear Senator Gramm:

My wife and I in no way want to burden you or your staff with any type of frivolous problems we may encounter. However, when you stand alone against some eight different law firms with hundreds of lawyers (not counting the many thousand of the united States Government)

and feel your constitutional rights are being striped from you, one has to turn to someone for help. In no way can I ever attempt to outline the numerous questions I have, but I would like to highlight some of the more critical areas for you to perhaps give us your answers:

1. Under the Texas Constitution, do we have Homestead rights to approximately 200 acres of our farm?

2. Is the Federal Deposit Insurance Corporation (FDIC) protected by law, made by the U. S. Congress, to have a " shield " that says even though maybe the Bank did unlawfully foreclose, they have been taken over by the FDIC (although they were solvent) and there is nothing anyone can do about it?

3. Has the Small Business Administration (SBA) foreclosed on the family farm (that were or are delinquent in

their repayments) on any or all Farm Disaster Loans that were created in the early 70's?

4. Does the Department of Agriculture through any of its agencies (ASCS Offices - Cherokee County) have the right to remove a portion of their collatoral, leaving a health problem and a hazzard problem to the community?

5. Does the U. S. Bankruptcy Court have the responsibility to enforce their order given in open court (May 4, 1988) to have the United States Trustee render an opinion on who is a party to a lawsuit (no opinion has been given) when there is the Debtors' homestead involved throughout the lawsuit?

6. Does the U. S. Bankruptcy Court have the obligation to fulfill an order by a U. S. District Court (Judge Wm. Wayne Justice) requesting the Bankruptcy Court to have the U. S. Trustee render an

opinion as to who is a party of the lawsuit A-86-339?

It is our understanding of our Constitution of the U.S.A. that the 5th Amendment gives us this protection to receive Due Process of Law toward any and all Federal agencies. We do not feel that we are receiving Due Process of Law.

We are sending under separate cover documents to back up all of the above questions that we feel sure will enlighten you a good deal more. If you or your staff would let us know of further information needed, we will send it immediately.

Yours very truly,

/s/ Warner Bailey

Warner Bailey, pro se
P. O. Box 769
Wells, Texas 75976
(409) 867-4801

CC: Tyler Office

InterFirst Bldg., Suite 201

Tyler, TX 75702

FDIC

Federal Deposit Insurance Corporation

Washington,D.C. 20329

Office of Legislative Affairs

July 11, 1989 (envelope addressed to Baileys postmarked July 26, 1989)

Honorable Phil Gramm

United States Senator

2323 Bryan Street, Suite 1500

Dallas, Texas 75201

Dear Senator Gramm:

Thank you for your recent referral of correspondence from Mr. Warner Bailey of Wells, Texas.

Mr. Bailey questioned whether the Federal Deposit Insurance Corporation is afforded special protection as Receiver of RepublicBank, Lufkin in connection with a possible unlawful foreclosure by the Bank. Mr. Bailey should be advised that no such special protection exists.

If Mr. Bailey believes that the Bank engaged in unlawful or tortious foreclosure, he may file a claim or institute a lawsuit against the Receivership. Such a claim may be filed with the following FDIC office:

Federal Deposit Insurance Corp.
Attention: Claim Agent
1910 Pacific Avenue, Suite 1600
Dallas, Texas 75201
(214) 754-0098

If you have any further questions, please let me know.

Sincerely,

/s/ Beth L. Climo
Director

Loren T. Hooper
Legislative Attorney & Advisor
Office of Legislative Affairs
Federal Deposit Insurance Corporation
Washington, D.C. 20429 (202) 898-6988